U.S. Department of Labor

Office of Administrative Law Judges
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DATE ISSUED: July 21, 2000

CASE NO.: 1998-LHC-0608

OWCP NO.: 6-173623

IN THE MATTER OF

STEVE LOYD,
Claimant
v.

RAM INDUSTRIES, INC.,
Employer

and

LWCC,
Carrier

APPEARANCES:
Billy Wright Hilleren, Esq.,
For Claimant

Ted Williams, Esq.,
For Employer

BEFORE: C. Richard Avery
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et. seq., (The Act), brought by Steve Loyd

(Claimant) against Ram Industries, Inc. (Employer) and LWCC, (Carrier). A formal hearing was not held, but instead, by agreement of the parties, the case was submitted on the record. The following exhibits were received into evidence: Joint Exhibit 1; Claimant's Exhibits 1-25; and Employer's Exhibits1-4. This decision is based on the entire record.[1]

Stipulations

The parties entered into joint stipulations of facts and issues which were submitted as follows:

1. An injury or accident occurred on April 24, 1997;
2. The injuries arose within the course and scope of employment;
3. An employer-employee relationship existed at the time of the accident;
4. Employer was advised of the injury on April 24, 1997;
5. A Notice of Controversion was filed on August 1, 1997; and
6. An informal conference was not held.

Unresolved Issues

The unresolved issues in this case are:

1. Jurisdiction;
2. Claimant's average weekly wage at the time of his injury;
3. Nature and extent of Claimant's disability, including date of maximum medical improvement;
4. Whether Employer is liable for 14(e) penalties; and
5. Whether Employer is responsible for Claimant's medical expenses.

[1] The following abbreviations will be used throughout this decision when citing evidence of record: Joint Exhibit - "JX __, pg. __"; Employer's Exhibit - "EX __, pg. ___"; and Claimant's Exhibit - "CX __, pg. ___".

STATEMENT OF THE EVIDENCE
Testimonial Evidence

Steve Loyd, Claimant[2]

Claimant, who has since died from unrelated causes, was 45 years of age at the time of his November 18, 1998, deposition. Claimant testified that he completed the sixth grade in school, and reported employment, prior to his employment with Ram Industries, with a barge line, Golden Corral, Shoney's, a construction company, the City of Gulfport, self-employment operating a lawn maintenance service, and employment with a nursery. He testified that he began working for Ram Industries, a dredging company, in February, 1997, and was employed for two months prior to his accident. Claimant stated he worked seven days a week for 12 hours a day, and only recalled missing work for three or four days during that two month period when the dredge was out of commission. Claimant testified he was paid $8.00 an hour and received time and half for overtime. (CX 25; EX 1).

Claimant explained that while he was employed with Ram they were in the process of dredging Bayou LaBatre in order to deepen the navigable channel. The material being dredged would proceed through a pipeline which was attached to the dredge, and continue through the pipeline with the assistance of additional pressure provided by the booster, and eventually would be deposited into the dump pit. According to Claimant, Employer had a trailer on site, and there was a cement apparatus with hooks to which the dredge would dock on occasion. However, for the majority of the time, the dredge would travel between the middle of the channel and shore while performing its function of dredging. (CX 25; EX 1).

Claimant testified that his primary duty with Employer was to ensure that the booster was functioning properly during this dredging operation, and additionally, to check the pipelines for leaks. Claimant stated that in order to perform his duties, he inspected the pipeline constantly and cleared the line if any clogging developed. Claimant also reported driving a bulldozer on a few occasions in order to move the dredged material out of the way of the pipeline exit to allow the refuse from the pipeline to flow freely. Claimant explained that during his employment he was required to board the dredge on about ten occasions in order to obtain diesel fuel and

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[2] I use the term "Claimant" to describe the employee , though technically because Mr. Loyd is now deceased the legal "claimant" is now Sylvia Loyd, according to the Letters of Administration introduced as CX 26.

tools, and that he remained aboard the dredge for five to fifteen minutes a trip. (CX 25; EX 1).

According to Claimant, his injury occurred on April 24, 1997, when he was stepping onto scaffolding while attempting to check oil in the booster and the scaffolding collapsed.[3] Claimant stated he fell approximately 20 feet sustaining neck and back injuries, bruises to his ribs, and dental injuries. Claimant reported that he was taken by ambulance to the USA Medical Center in Mobile, Alabama, and was released that day but was removed from work. Claimant was instructed to visit a physician after discharge and was eventually examined by Dr. Church Murdock. Claimant reported he later was evaluated by Dr. Fleet, a neurologist, and at the time of his deposition was under the care of Dr. Anderson, as well.[4]

Although Claimant reported that his ribs and back were healing, he continued to have difficulty with his neck and had not yet had the financial ability to correct his dental injuries. Claimant additionally noted that since the injury, he had experienced severe headaches, and because he did not suffer from these headaches prior to his injury, he maintained the headaches were a result of his work-related accident. Since his April 24, 1997, accident, Claimant had not returned to work with Ram or any other Employer as he stated that he had not been released by any physician. (CX 25; EX 1).

Medical Evidence

USA Knollwood Hospital

Records from USA Knollwood Park Hospital in Mobile Alabama indicate Claimant presented at the emergency room on April 24, 1997, reporting a 20 foot fall

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[3] Claimant acknowledged several previous work related injuries, but he was unable to provide approximate dates of their occurrence. Claimant testified that while he was employed by Jim Walters, a construction company, he fell from a two- story house sustaining a back injury which removed him from work for about a year. Claimant was treated conservatively and filed suit to recover his medical expenses which resulted in a settlement with the insurance company. Additionally, Claimant reported an injury to a nerve in his leg when steps fell on him while working for a contractor at Chevron. Claimant underwent surgery on his leg and filed a suit in order to recover money for his medical expenses and lost wages. (CX 25; EX 1).

[4] Dr. Murdock apparently passed away while Claimant was undergoing treatment with him, and thus, his care was transferred to Dr. Anderson.

from scaffolding. Claimant complained of thoracic and cervical spine pain, and wrist pain. X-rays revealed degenerative changes at C6 and C7, but were otherwise unremarkable. Claimant was released that day, placed on bed rest, and instructed to visit a physician as soon as possible. (CX 7).

Church E. Murdock, M.D.

Claimant initially presented to Dr. Church Murdock on April 29, 1997, with complaints of neck, rib, right arm and lumbar pain, and headaches resulting from a work-related fall. Claimant was prescribed medication and therapy. Claimant continued with conservative treatment under Dr. Murdock's care attending physical therapy twice a week from May, 1997, to September, 1997, and then less frequently, but continuously. According to the records of evidence, Claimant was last evaluated by Dr. Victoria Anderson, an associate of Dr. Murdock's who assumed Claimant's care after Dr. Murdock passed away, on June 10, 1999. At that time, Claimant presented with continued neck pain and headaches, but reported that the medication decreased his pain. (CX 8).

South Baldwin Hospital

Records from the Emergency Room at South Baldwin Hospital note that Claimant presented on May 17, 1997, complaining of a headache which had lasted for at least two days and was not aided by medication. He was diagnosed with a meningitis sinusitis migraine and was discharged home to follow-up with his family physician. He returned with the same complaints on May 24, and May 27, 1997, at which time he was recommended to follow-up with a neurologist. Claimant presented again on June 25, 1997, reporting upper abdominal pain for 2 to 3 days prior. He was diagnosed with appendicitis gastroenteritis chronic pain and was discharged home to follow up with his personal physician. Finally, Claimant returned on August 7, 1997,when he sought but was denied narcotics for his headache pain. (CX 9 & 10).

Baptist Hospital

Claimant presented to the Emergency Room at Baptist Hospital on September 16, 1997, and December 10, 1997, complaining of severe headaches. Claimant was provided with medication and discharged home. (CX 13).

William Shepherd Fleet, M.D.

Dr. William Fleet, board certified neurologist, testified by deposition on June 16, 2000. According to Dr. Fleet, he originally examined Claimant on July 1, 1998, upon referral by Claimant's attorney. Claimant presented with neck and lower back pain, bruised ribs, and severe headaches. Following examination, Dr. Fleet related Claimant's headaches to postconcussive syndrome, and his back and neck pain to a cervical and lumbar sprain. Medication and continued therapy was recommended, and Claimant was to remain off of work. (CX 18 & 28)

Claimant returned to Dr. Fleet on July 15, 1998, with Claimant reporting a decrease in his headache pain, but continued neck pain. Following an examination which revealed limited motion, tightness and spasms in his neck, Claimant was recommended to undergo an MRI. Additional medications were prescribed and Claimant was to remain out of work. (CX 18 & 28). The MRI was performed on August 2, 1998, and indicated that Claimant suffered from severe degenerative disc disease, most notably at C5-6 and C6-7, with neuroforaminal encroachment. When Claimant returned on August 5, 1998, conservative care was continued and Claimant remained off of work. (CX 18 & 28).

Claimant returned, at least monthly from August, 1998, until November 4, 1999, during which time, Claimant's complaints went unchanged, as did Dr. Fleet's diagnosis and his continuing recommendation that Claimant remain off of work. When Claimant presented on January 13, 1999, he reported treatment by Dr. Anderson which included daily shots of Nubain, a narcotic. Dr. Fleet opined such daily use of narcotics was inappropriate for a 20-month-old injury and recommended against them.

Dr. Fleet opined that Claimant's work-related accident was responsible for Claimant's complaints of headaches, back and neck pain, and noted that Claimant's fall either aggravated his degenerative condition or partially caused the condition.[5] He opined that the therapy Claimant received from May, 1998, to June, 1999, from Drs. Murdock and Anderson was appropriate treatment in light of Claimant's condition. Additionally, Dr. Fleet opined Claimant had not yet reached maximum

[5] Dr. Fleet testified he was aware that Claimant suffered a motor vehicle accident three months prior to his initial treatment after which Claimant complained of blood in his urine. However, Dr. Fleet stated that, in his opinion, he did not feel that the car accident contributed in any way to Claimant's neck condition.

medical improvement and that Claimant remained unable to return to work as of his final visit of January, 1999, and that Claimant probably continued with his chronic pain and inability to work up to his death on October 5, 1999.

Elias G. Chalhub, M.D.

Dr. Elias Chalhub, neurologist, evaluated Claimant on May 26, 1999, and following examination, he stated that he found no evidence of a neurological impairment. Dr. Chalhub opined that Claimant's headaches appeared vascular or migraine in nature and did not appear consistent with a two year old accident. Dr. Chalhub additionally opined that Claimant's neck pain was myofascial in origin, and he stated that epidural injections, apparently recommended by another physician, appeared excessive since Claimant was already receiving Nubain injections for his pain. (EX 4).

Other Evidence

Records from the U.S. Army Corp of Engineers reports that Ram Industries was a subcontractor whose duty of dredging included the removal, transportation, and satisfactory disposal of the dredged soil and non-soil substances from Bayou LaBatre. (CX 23).

Social Security records indicate that in 1996, Claimant was employed by Shoney's, Skilstaf, Inc, and Employment Contractors Inc., earning a total of $7,056.38. Records additionally indicate that in 1997, Claimant earned $168.00 in wages from Flowerwood Liners, Inc., and $5,906.25 in wages from Ram Industries, Inc.. (CX 6).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

To be covered under the Act, a claimant must satisfy the "status" requirement of Section 2(3) of the Act and the "situs" requirement of Section 3(a). 33 U.S.C. § 902(3), 903(a). See Northeast Marine Terminal Co., Inc. v. Caputo, 432 U.S. 249, 6 BRBS 150 (1977). Status refers to the nature of the work performed whereas situs refers to the place of performance. In regard to land based workers, the workers need not ever go aboard a vessel or other navigable waters to be covered under the Act. The United States Supreme Court has held that in order to be covered under the

Act as a longshoreman, an employee must be engaged in work, which is integral to the overall process of loading and unloading vessels. Caputo, 432 U.S. 249. Thereafter, the Court held that coverage extends to workers who, although not actually loading and unloading vessels, are involved in the intermediate steps of moving cargo between ship and land transportation. P.C. Pfeiffer Co., Inc. v. Ford, 444 U.S. 69, 100 S.Ct. 328 (1979); see also Chesapeake & Ohio Ry. Co. v. Schwalb, 493 U.S. 40, 110 S.Ct. 381.

Situs

Section 3(a) of the Act provides that a compensable injury must occur on the navigable waters of the United States including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel." 33 U.S.C. § 903(a)(1988). By the 1972 amendments to the Act, Congress expanded the jurisdictional lines landward to cover injuries occurring on the enumerated adjoining land areas. Texports Stevedore Company v. Winchester, 632 F.2d 504, 510 (5th Cir. 1980), cert. denied, 452 U.S. 905 (1981).

Based upon the evidence of record, I find Claimant has satisfied the situs portion of the jurisdictional analysis as Claimant's injury occurred in an area adjoining navigable waters which was customarily used by Employer to unload dredged material. Claimant was employed by Ram Industries, whose primary purpose, according to documents from the U.S. Army Corp of Engineers, was dredging Bayou LaBatre, a navigable waterway. Employer's duty of dredging included the removal, transportation, and satisfactory disposal of the dredged soil and non-soil substances from Bayou LaBatre. Employer performed this duty by operating a dredge which fed the soil and non-soil material through a pipeline where it was assisted by the pressure provided by the booster into a dump pit which was located on Employer's site located immediately adjacent to the navigable waterway of Bayou LaBatre.

Claimant's injury occurred while he was on Employer's site, less than a quarter mile from the shoreline, standing on scaffolding which provided access to the pipeline which was performing the unloading operation, and the scaffolding collapsed. Employer's work site was, according to the contract, used exclusively by Employer for the unloading of dredge materials, and it was "customarily" used for such purposes as Employer had been performing these functions for at least two

months prior to Claimant's injury. Therefore, based upon the evidence of record, I find the situs element has been satisfied under these facts.

My opinion is supported by a recent Third Circuit decision, Nelson v. American Dredging Co., 143 F.2d 789, 795-97 (3rd Cir. 1998). In that decision, the Third Circuit opined that a bulldozer operator who sustained an injury while involved in a beach reclamation project satisfied the situs test because the beach was determined to be an area adjoining navigable waters and customarily used by the employer to discharge sand from its dredge by way of a pipeline onto the beach. I find this factual situation on point with the Nelson analysis and thus find that Claimant has satisfied the situs test.

Status

The status requirement of Section 2(3) limits coverage to "employees" engaged in "maritime employment" as a "longshoreman ... or any harbor-worker including a ship repairman, shipbuilder and shipbreaker..." 33 U.S.C. § 902(3). Accordingly, Claimant may establish status by showing he is engaged in one of the activities listed. Additionally, the Supreme Court has clearly decided that, "aside from the specified occupations, land-based activity occurring within the Section 903 situs will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel." Chesapeake and Ohio Railway Company v. Schwalb, 493 U.S. 40, 45, 110 S.Ct. 381, 384 (1989); Munguia v. Chevron U.S.A., Inc., 999 F.2d 808, 811 (5th Cir. 1993).

In this instance, I find Claimant was a "maritime employee" as his duties were essential to the unloading of the dredged material. Claimant's primary function during his employment with Ram Industries was to ensure the soil and non-soil material dredged from Bayou LaBatre traveled through the pipeline without difficulty and into the dump pit. Additionally, Claimant occasionally operated a bulldozer clearing the dredged material and ensuring the pipeline remained unclogged. As such, Claimant was responsible for ensuring proper flow of the pipeline as well as patching any holes which developed in the pipeline during the unloading process. Thus, the dredged material could not have been unloaded satisfactorily without Claimant performing his employment duties.[6] Just as the claimant in the Third

[6] In his order granting Ram's Motion for Summary Judgment on the issue of seaman status, Judge Vollmer found Claimant to be a land-based maritime employee whose inspection and

Circuit's decision was determined to be a vital part of the unloading process necessary for operation of the dredge pumping sand onto the beach, Claimant's function here too was essential for unloading of the dredged material onto shore and into the dump pit. Nelson, 143 F.3d at 798-99.

As Claimant has satisfied both the situs and status tests, I find that jurisdiction under the Act is appropriate in this instance.

Average Weekly Wage

The parties are in disagreement over the appropriate calculation of Claimant's average weekly wage at the time of his injuries. Claimant's average weekly wage is determined at the time of injury by utilizing one of three methods set forth in Section 10 of the Act, 33 U.S.C. §910(a)-(c). Section 10(c), which both parties agree is applicable in this case, provides a general method for determining annual earning capacity where Section 10(a) or (b) cannot fairly or reasonably be applied to calculate claimant's average weekly wage at the time of the injury. Because Claimant did not work in the same or comparable employment in the year preceding his injury, and no evidence of similarly situated employee's wages were submitted, I agree that Section (c) is most appropriate for this analysis. Empire United Stevedores v. Gatlin, 936 F.3d 819, 25 BRBS 26 (CRT) (5th Cir. 1991); Palacios v. Campbell Industries, 633 F.2d 840, 12 BRBS 806 (9th Cir. 1980); Lobus v. I.T.O. Corp. of Baltimore, Inc., 24 BRBS 137 (1991).

Because Claimant only worked for Employer for two months prior to his injury, the parties disagree as to the most fair and accurate calculation of Claimant's average weekly wage. Claimant argues his wages from two months of work for Employer should be annualized to project his yearly earnings had he not been injured, providing an average weekly wage of $817.50. Employer, on the other hand, argues that a fair average weekly wage would be obtained by dividing Claimant's earnings from 1996, to his injury of April, 1997, and dividing by the 68 weeks comprised in that period. Based upon the evidence of record, I agree with Employer. Claimant worked for Employer for only two months and his previous spotty work history provides no indication Claimant would have remained with Employer in the future. Moreover, there is no evidence that Employer's dredging

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maintenance of the booster pump and the land-based section of the discharge pipe contributed to the function of the dredge or the accomplishment of its mission.

operations would have continued indefinitely. Therefore, I find that the fairest calculation of Claimant's average weekly wage is $193.09.[7]

Nature and Extent of Claimant's Disability

The parties in this case have stipulated that Claimant sustained a work-related accident which resulted in injuries to his back and neck on April 24, 1997, when Claimant fell approximately 20 feet when scaffolding upon which he was standing collapsed. The parties, however, disagree as to the nature and extent of Claimant's disability. Employer contends that Claimant's strain type of injury which resulted from the accident should have resolved after approximately six months and that Claimant's disability should therefore have ended prior to his death on October 5, 1999. Claimant's representative, on the other hand, asserts that Claimant had not reached maximum medical improvement as of his death and additionally, had not been released to perform any type of employment. Based upon the medical evidence of record, I agree with Claimant's counsel and find that from January 24, 1997, until Claimant's death on October 5, 1999, Claimant was temporary totally disabled as a result of his April 24, 1997, work related accident.

Having established an injury, the burden rests with Claimant to prove the nature and extent of his disability. Trask v. Lockheed Shipbuilding Construction Co., 17 BRBS 56, 59 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). Id. At 60. The date of maximum medical improvement is defined as the date on which the employee has received the maximum benefit of medical treatment such that her condition will not improve. The date on which a claimant's condition has become permanent is primarily a medical determination. Manson v. Bender Welding & Mach. Co., 16 BRBS 307, 309 (1984). The date of maximum medical improvement is a question of fact based upon the medical evidence of record regardless of economic or vocational consideration. Louisiana Insurance Guaranty Assoc. v. Abbott, 40 F.3d 122, 29 BRBS 22 (CRT) (5th Cir. 1994); Ballesteros v. Willamette Western Corp., 20 BRBS 184, 186 (1988); Williams v. General Dynamic Corp., 10 BRBS 915 (1979).

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[7] An average weekly wage based upon Claimant's suggested computation would render yearly earnings of $42,510, a grossly disproportionate yearly salary based upon Claimant's earnings history which indicates that Claimant failed to earn more than $7,056.38 in any given year for which records were introduced, and that from1987 through 1995, he earned a total of only $3,290.58 for the entire eight year period.

Based upon the evidence of record, I agree with Claimant's position and find that Mr. Loyd failed to reach maximum medical improvement (MMI) prior to his death on October 5, 1999. Claimant's choice of physician, Dr. William Fleet, neurologist, testified by deposition that Claimant had not yet reached maximum medical improvement as of his final visit of record, January 13, 1999. Moreover, Dr. Fleet testified that, in his opinion, Claimant would probably not have reached maximum medical improvement by the date of his death, October 5, 1999.

The only evidence of record which could arguably contradict Dr. Fleet's opinion is the opinion of Dr. Chalhub, Employer's choice of physician. However, as Dr. Chalhub evaluated Claimant only once, on May 26, 1999, he thus failed to have the benefit of following Claimant's condition over an extended period of time as did Dr. Fleet who treated Claimant for over a six month period. Furthermore, Dr. Chalhub failed to specifically state his opinion as to whether or not Claimant had reached maximum medical improvement. Thus, I find Dr. Fleet's opinion most persuasive and find that Claimant had not yet reached maximum medical improvement as of the date of his death, October 5, 1999. Consequently, any disability awarded will be temporary in nature.

The question of extent of disability is an economic as well as medical concept. Quick v. Martin, 397 F.2d 644 (D.C. Cir. 1968); Eastern S.S. Lines v. Monahan, 110 F.2d 840 (1st Cir. 1940). A claimant who shows he is unable to return to his former employment establishes a prima facie case for total disability. The burden then shifts to the employer to show the existence of suitable alternative employment. P & M Crane v. Hayes, 930 F.2d 424, 430 (5th Cir. 1991); N.O. (Gulfwide) Stevedores v. Turner, 661 F.2d 1031, 1038, 14 BRBS 1566 (5th Cir. 1981). Furthermore, a claimant who establishes an inability to return to his usual employment is entitled to an award of total disability compensation until the date on which the employer demonstrates the availability of suitable alternative employment. Rinaldi v. General Dynamics Corp., 25 BRBS 128 (1991).

I find that Claimant has presented a prima facie case for total disability as every physician of record who has offered a position regarding Claimant's ability to return to work has denied that he was ever capable of doing so after his April 24, 1997, accident. Following his injury, Claimant was initially evaluated at the emergency room of U.S.A. Knollwood Park Hospital on April 24, 1997, where he

was removed from work and instructed to visit his choice of physician. Thereafter, Claimant selected Dr. Church Murdock who first evaluated him on April 29, 1997, and opined Claimant was unable to return to work at that time. Dr. Murdock and his associates continued to keep Claimant off of work and in therapy for the remainder of his treatment, through June 9, 1998.

On July 1, 1998, Claimant began treatment with Dr. William Fleet, board certified neurologist. Dr. Fleet immediately opined that Claimant was unable to return to employment, and continued to be of that opinion throughout his treatment of Claimant. Moreover, in his deposition testimony, Dr. Fleet opined that Claimant more than likely continued in total disability through the date of his death, October 5, 1999.

The only physician of record who arguably contradicts Dr. Fleet's opinion is that of Dr. Chalhub, and because I find Dr. Fleet's opinion most persuasive for the reasons previously discussed, I find Claimant was totally disabled as of the date of his accident, April 24, 1997, and that he continued in his total disability until the date of his death, October 5, 1999.

Employer's Responsibility for Medical Expenses

The parties appear to be in agreement that Claimant's initial choice of physician was Dr. Church Murdock, and that Claimant's treatment then transferred to Dr. William Fleet, board certified neurologist, when it was determined that Claimant was in need of a physician with a neurological specialty. Thus the only issue regarding medical expenses which I must determine is whether or not Employer is liable for Claimant's medical expenses. In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. Parnell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R. § 702.402. A claimant has established a prima facie case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-258 (1984).

As Mr. Loyd only underwent conservative and limited care, I find all of the medical treatments received were both reasonable and necessary in light of Claimant's symptoms. Additionally, all of the treatment provided to Claimant by Drs. Murdock, Anderson and Fleet was related to injuries sustained in his April,

1997, on-the-job accident, and determined necessary by qualified physicians.[8] Consequently, I find Employer responsible for all of Claimant's medical benefits which were related to the injury under discussion.

14(e) Penalties

Under Section 14(e) an employer is liable for an additional 10% of the amount of workers' compensation due where the employer does not pay compensation within 14 days of learning of the injury, or fails to timely file a notice of controversion within 14 days. 33 U.S.C. §914. In this instance, Employer has paid no compensation and stipulated that a notice of controversion was not filed until August 1, 1997, clearly more than 14 days after Employer's April 24, 1997, notification of the accident. Therefore, Claimant is owed 14(e) penalties, the exact amount to be calculated by the District Director.

CONCLUSION

Based upon the foregoing findings of fact, conclusions of law and the entire record, I hereby enter the following order:

ORDER

It is hereby **ORDERED** that:

1. Employer shall pay compensation for Steve Loyd's temporary total disability, from April 24, 1997, to October 5, 1999; based upon his average weekly wage of $193.09;

2. Employer shall receive a credit for all benefits previously paid under the Act;

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[8] While causation of Claimant's headaches was not listed as an issue, there appears to be some controversy in the record regarding this issue as Dr. Chalhub has opined the headaches to be unrelated to Claimant's on-the-job accident. Thus, for clarity's sake I note that my decision regarding Employer's responsibility for medical payments includes payment of medical expenses for treatment regarding Claimant's complaints of headaches as I find, based upon Dr. Fleet's opinion, that Claimant's headaches were related to his on-the-job injury.

3. Pursuant to Section 7 of the Act, Employer shall be responsible for all past reasonable and necessary medical expenses related to treatment of Steve Loyd's on-the-job injury of April 24, 1997;

4. Pursuant to Section 14(e) of the Act, Employer shall be assessed penalties on all compensation not timely paid, the exact amount to be calculated by the District Director as heretofore set out;

5. Employer shall pay interest on all of the above sums determined to be in arrears as of the date of service of this ORDER at the rate provided by in 28 U.S.C. §1961 and Grant v. Portland Stevedoring Co., 16 BRBS 267 (1984);

6. Counsel for Claimant, within 20 days of receipt of this ORDER, shall submit a fully supported fee application, a copy of which must be sent to opposing counsel who shall then have 10 days to respond with objections thereto. See, 20 C.F.R. §702.132; and;

7. All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

Entered this day of July, 2000, at Metairie, Louisiana.

C. RICHARD AVERY
Administrative Law Judge

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